

Standardization of legal terminology during the translation process: a necessity for a better law enforcement

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Abstract:

It is evident that the translation of legal documents falls within two disciplines, that of language and linguistics on one hand, and that of a juridical nature on the other. This allows us to speak of this process as a 'multidisciplinary operation'. In this respect, it is generally accepted that the translator of a legal text should have the ability to comprehend the intention and message of the ST as fully as possible and have general knowledge of law. International law needs to be translated accurately in order to fit every country's national political and cultural mentality. In order to reduce the number of international disputes, especially in the field of legal documents, there should be some sort of standard form of legal concepts' equivalents, which is not based on the mechanical choice of the meaning but involves a comprehensive and contextual choice. This study aims to analyze the discrepancies identified during the editing process of the translated version into Albanian of the International Convention on Cluster Munitions and raise the need for standardization of legal concepts in order to minimize the misinterpretation and of the law which, in turn, results in a better law enforcement.

Keywords: *standardization, legal terminology, translator's competence, legal systems, editing*

Introduction

English is the *lingua franca* in most of the international gatherings, be them political, economical, social, artistic, literary etc. Similarly, in this framework, diplomatic and political interaction among nations is rapidly increasing, thus, rising the need for professionalism in translation. Albania is a member of several prestigious international organizations like United Nations Organization (UN), North Atlantic Treaty Organization (NATO), Organization for Security and Cooperation in Europe (OSCE), etc. and it has applied for European Union membership. As a Member State of such

international organizations, Albania has ratified a great number of treaties which in order to be fulfilled successfully need to be translated correctly. One of the UN treaties that Albania has ratified is of the Convention on Cluster Munitions. The Convention on Cluster Munitions, CCM, prohibits all use, stockpiling, production and transfer of Cluster Munitions. Separate articles in the Convention concern assistance to victims, clearance of contaminated areas and destruction of stockpiles. Albania's Membership to CCM came as a result of the Kosovo conflict, during which cluster munitions were used by both the armed forces of Serbia and NATO allied forces, contaminating a considerable area in northeast Albania.

I have decided to analyze this treaty for two reasons: a) it is a typical example of structural, syntactical and terminological complexity; b) I had the chance to work for the project which coordinated and monitored the activities and operations in the framework of the convention's obligations, and as such I was commissioned to edit the translated version of CCM. During the editing process, many discrepancies were observed in terms of terminology which might have led to misinterpretation on the part of the implementers of this treaty.

As far as the methods of analysis are concerned, the statistical method and key-wording has been applied. Statistical method investigates the density and distribution of a styleme or other stylistic indicators of a given text and then compares the data with another text which functions as a norm or etalon. (Ristani, 2010: 50) Its main objectives are finding patterns of repetition, the importance they have in the overall style and tone of the text as well as studying the way they are adapted in the target text.

Differences in the Legal Systems

Problems facing the translator of legal texts, apart from those of a terminological nature, includes the process which takes place not only between two languages but also between two or more legal systems. Therefore, the use of bilingual and multilingual law dictionaries is not sufficient for the process to succeed. The translator must have a good knowledge of both systems and consequently s/he should be skilled in the analytical and empirical methods of comparative law.

This idea is also supported by Carballal, who refers to comparative law as the 'more powerful ally', which we resort to in cases when dictionaries fail to satisfy us. (Carballal 1988: 448) He explains that comparative law

provides a good source of guidelines for a scientific treatment of the text to be translated and this is achieved through it being a method of comparison between legal systems. (Carballal 1988: 448) "Comparative law' is the comparison of different legal systems of the world."

However, understanding the legal concepts does not always prove easy. In many cases it is hard to achieve due to many reasons, among which is the permanent shift of concepts. Lehto explains this process of permanent shift of concepts. She says: As we well know, legal concepts are based on a long historical development, and where that development differs, so do often the concepts. Furthermore, legal concepts are abstract: we cannot take the 'object' in our hands in order to examine it or draw a picture of it; we can only understand it as part of the system of concepts that it belongs to. (Lehto 1988: 432)

In other words, there is no universal language when it comes to law, unlike other technical languages such as physics or mathematics. Weisflog suggests that although formal correspondence is achieved to a certain extent, it does not necessarily mean that the concept equivalent is achieved. Weisflog cites an example: In 'English' law, «theft» is defined in accordance with section 1 of the Theft Act 1968, as «the dishonest appropriation of the property belonging to someone else with the intention of keeping it permanently». In German law, on the other hand, «Diebstahl» is defined, in accordance with paragraph 242 of the (West) German Criminal Code (STGB) as follows: A person is guilty of theft if he takes away movable property belonging to another with the intention of appropriating it unlawfully. (Weisflog 1987: 210-211)

However, cases of differences in concepts appear less in translating universal legal material such as treaties. There is usually less difficulty on the conceptual and terminological levels because these are usually governed by international institutions (e.g. the UN), and therefore there is less difference on the systemic level, and more chance of standardizing them. International treaties are hybrids and therefore they are not restricted by a particular legal system. It is safe to assume that treaties are restricted by an international code rather than a legal system. Thus, in the act of translation the translator is not restricted by a particular legal system but by the norms established by the international code.

The Translator's Legal Competence

Assuming that the translator is competent on the language level, a new issue arises, the translator's competence on the legal level. Weisflog

suggests that the process of translation involves first the translator's comprehension of the author's message. Then the second stage involves transferring this message by way of restructuring. (Weisflog 1987: 190-191) He suggests that the comprehension stage entails analysis and interpretation of the text. He states, "Each analysis involves to a certain degree an *interpretation* of the original, i.e. the authors' message- his train of thoughts crystallized into words- since the latter (and sometimes also the former!) are rarely absolutely clear-cut, unambiguous". (Weisflog 1987: 190)

However, the translator is not allowed complete liberty in producing her/his own legal interpretation unless s/he has adequate legal training of the two legal realities which enables her/him to judge the required meaning of the legal text. Therefore, Weisflog suggests that translators have similar role to that of the jurist who has to interpret the words or intentions of the legislator in one way or another. (Weisflog 1987: 190) It is still controversial whether a legal translator should be legally trained. It is quite an accepted fact that the legal translator should have minimum specific legal translation training.

A person who has good command of two or more languages and an adequate background in law should also be aware of his/her ethical responsibilities and duties. In translating sensitive texts such as legal documents, the translator must be aware of her/his role as the carrier of truth. A translator should be impartial; s/he should be able to convey the true meaning without any personal interference or bias, whether linguistically or otherwise.

Mistakes in legal translation are usually related with insufficient knowledge of the linguistic systems of the SL and the TL, unawareness of the legal systems, and most importantly ignorance of the background of the text. Experienced translators are expected to be able to avoid such errors or breaches. Those who reach the stage of being labelled legal translators would have gained or acquired the skills and experience required for performing such sensitive tasks. In his introduction to the French Civil Code, Crabb borrows an expression from Italian which says '*tradurre e tradire*' which means "to translate is to betray", and by this it is suggested, that "translation has analogies to that of the traitor, though hopefully its worst potential consequences are less serious". (Crabb: 1995)

The process of translation editing

The same aspects that were mentioned above appeal to the editing process of translated texts as well. The only difference is that the editor should compare and contrast both versions with the view of drawing similarities and differences. After translation is compared to the original (source) text, and the translated text is reviewed as a whole, the editor should check for things like consistency, clarity, word choice, jargon, style and tone, uniformity of terms, etc. Additionally, the editor should be objective during the editing process.

There is little theoretical literature on the editing process and methodology, partly because translation editor follows the same methodology as the professional translator. Campbell has identified six dimensions of editing (strategy, purpose, level, frequency, economy and effectiveness), each of which has its own sub-dimensions. The purpose of editing seems to be either that of correction or revision, the former being concerned with structural errors and the latter with choosing among alternative semantic solutions to achieve more appropriateness, although it is not always possible to fix a boundary between them. Editing applies to various levels, i.e., clause, phrase, word, but also text. (Campbell, 1998: 132) All these analytic instruments make it possible to better define the ability of editing and, consequently, some aspects of translation competence.

The first stage that the editor should follow is to read the target text and to see if it is logical, understandable and smooth. At this stage, there is no need for comparison of the translation with the source text. It helps to investigate and pinpoint sentences with the awkward syntax structure and unclear meaning. The editor then proceeds to an intensive, analytical reading between the source and target texts with the aim of comparing both texts.

Comparative analysis of inconsistent terms within the convention

Comparing both ST and TT involves a number of activities: maintenance of the same visual structure (punctuation, paragraph division, etc.); During the application of this method, first, key words have been taken into consideration and how they were translated into Albanian. Some of the key words are: state parties, munition victims, remnants, etc.

Translation of the same term in two or more different ways within a single document can bring about confusion which in turn might lead to failure in reaching agreements between the implementing partners of the treaty.

Consequently, the standardization of legal terminology is necessary for a better enforcement of law.

Illustrations regarding inconsistencies in uniformity of translated terms can be found as follows:

Term in English	Number of Repetition	Versions given by the translator	Final translated version after editing
<i>State Parties</i>	127 times	29 times as “ <i>Shtet Anëtare</i> ” and 98 times as “ <i>Shtetet Palë</i> ”	<i>Shtetet Palë</i>
<i>Munition remnants</i>	41 times	10 times as “ <i>mbeturina të municioneve</i> ” and 31 times as “ <i>mbetje të municioneve</i> ”	<i>Mbetje të municioneve</i>
<i>Risk Reduction Education</i>	6 times	2 times as “ <i>edukim për reduktimin e rrezikut</i> ” and 4 times as “ <i>edukim për reduktimin e riskut</i> ”	“ <i>edukim për reduktimin e rrezikut</i> ”
<i>Each State Party</i>	25 times	11 times as <u><i>Secili Shtet Palë</i></u> , 14 times as “ <u><i>Çdo Shtet Anëtar</i></u> ”	<i>Çdo Shtet Palë</i>

“*State parties*” is a very frequently used term in many texts, especially now as it is the status that Albania might gain if accepted membership to the EU. In all the textbooks that I consulted I found it in both versions as: “*Shtet Anëtare*” and “*Shtetet Palë*”. Then I relied mostly on previous translations of the related treaties such as the Anti-Personnel Mine Convention and the Convention on Certain Conventional Weapons. The reason why I chose to consult these two materials is that the implementing actors of the previous conventions in Albania were the same as the ones

that were implementing the convention under study. So, it meant that there would be a consistency and a standardization of the term between these homogeneous documents which would be put in practice by the same partners and actors. Secondly, to my logic, “*Shtetet Palë*” would imply a more binding force than “*Shtetet Anëtare*”. “*Palë*” in Albanian is more binding than “*Anëtar*”, meaning that you are there to contribute and fulfill the obligations rather than just be a member.

“*Munition remnants*” is not rubbish thrown away by the military. According to the Oxford Advanced Dictionary “remnant” is a part of something that is left after the other parts have been used, removed, destroyed, etc. 2-) a small piece of fabric that is left when the rest has been sold or used. In the military context, remnants refer to surplus munitions that are no longer needed. Thus, the translated equivalence would be “mbetje”.

“*Risk*” is another term that has been misused by the translator due to failure to consider the importance of uniformity of terms within a text. “*Risk*” is a borrowed word that has recently gained terrain in Albanian language especially in the field of economy. However, this does not imply that we can use it interchangeably in all aspects.

The following examples are mistakes made by the translator due to the lack of knowledge that words of Standard English can acquire a shift in meaning in the legal context:

Legal Term in English	Number of repetitions	Versions given by the translator	Final translated version after editing
<i>Shall</i>	90 times	90 times “ <i>Do të</i> ”	<i>Duhet të</i>
<i>Victim assistance</i>	18 times	<i>Ndihmë për viktimat</i>	<i>Asistencë për të aksidentuarit</i>
<i>Assistance</i>	29 times	<i>Ndihmë</i>	<i>Asistencë</i>

The translator ignored the fact that “shall” in the legal context has got an imperative effect and connotation. The wrong equivalence in Albanian would result in change in of the tone of the ST. “Shall” is a very important linguistic tool throughout the text to convey the force of law. As such, it needs to render the same tone in the target text as well.

The word “*asistencë*” in Albanian has an institutionalized character, meaning that it is offered through programmes and organized schemes, e.g. “*asistencë sociale*”, whereas “*ndihmë*” has a more individual and pragmatic meaning, e.g. “*ndihma e parë*”. In the CCM’s context, it refers to the programme that the State Parties should carry out. Thus, “*asistencë*” is part of the system of terms in the framework of the convention. Lack of this piece of information led to the translator’s wrong choice.

Conclusions:

To conclude, while translating legal documents, there is no room for speculation and freedom; the translator must render the form and meaning as faithfully as possible within the norms allowed by the target language. With regards to international treaties, they are often conventionalized; these conventions appear at the lexical, syntactic and even structural levels. As for the loyalty of the translator to the source text, he/she should produce a text in the target language in the way that it serves a purpose similar to that of the original, while taking into consideration that it will be produced within a different linguistic and cultural readership.

Lack of standardization and uniformity in legal terms as well as failure to understand the legal concepts might lead to misinterpretation of legal documents. The final version of the translation must be accurate; it should avoid ambiguities, omissions, additions; it must have the same visual structure as the original one; the style and register must be preserved, bearing in mind the cultural and pragmatic adaptation.

The study stresses the fact that the editing process should result in the following:

- The meaning of the source text must not be mistranslated.
- Avoidance of ambiguities, omissions, additions.
- Grammar, syntax, punctuation, spelling must be correct.
- Style and register must be maintained.
- Cultural and functional adaptation must be acknowledged.

Finally, after the completion of editing, the editor sends the edited text back to the translator who makes the final decision on whether or not to accept the proposed changes. Teamwork of the editor and translator enhances the quality of the final translation.

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